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**Review Conference on the Agreement for the Implementation
of the Provisions of the United Nations Convention on the Law
of the Sea of 10 December 1982 relating to the Conservation
and Management of Straddling Fish Stocks and Highly
Migratory Fish Stocks**
New York, 22 to 26 May 2006

**Note verbale dated 31 March 2006 from the Permanent
Mission of Namibia to the United Nations addressed to
the Secretariat**

The Permanent Mission of the Republic of Namibia to the United Nations presents its compliments to the United Nations Secretariat and has the honour, with reference to the announcement of the Director of the Division for Ocean Affairs and the Law of the Sea at the fifth round of informal consultations of States parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, to submit Namibia's report on the implementation of the Agreement (see annex). The Permanent Mission would appreciate the circulation of the present letter and its annex as a document of the Review Conference.



Annex to the note verbale dated 31 March 2006 from the Permanent Mission of Namibia to the United Nations addressed to the Secretariat

Namibia's progress in the implementation of the UN Fish Stocks Agreement¹

INTRODUCTION

Namibia signed the UN Fish Stocks Agreement (FSA) on 19 April 1996 and ratified the FSA on 8 April 1998. This report provides a narrative on the progress made by Namibia to date in regard to the implementation of the FSA. Information is provided only for substantive articles under the FSA.

PART II: CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Management and development of fisheries in Namibia is the responsibility of the Ministry of Fisheries and Marine Resources (MFMR). MFMR's Mission Statement is: *"To strengthen Namibia's position as a leading fishing nation and to contribute towards the achievement of our economic, social and conservation goals for the benefit of all Namibians"*. Since independence in 1990, policy for the sector has been, and continues to be, driven by the following key document: Towards Responsible Development of the Fisheries Sector (1991, revised 2004).

The document acknowledges that policy statements and legislation alone cannot achieve aims of the FSA. Namibia has therefore ensured that, since Independence, adequate human, financial and material resources have been made available by MFMR for operations that support the UNFSA.

FISHERIES LEGISLATION

The Articles set forth in Part II of FSA are enshrined in the two primary legal instruments governing marine fisheries in Namibia:

- Territorial Sea and Exclusive Economic Zone of Namibia Act (No. 3 of 1990);
- Marine Resource Act (No. 27 of 2000).

At Independence, the Government proclaimed a 200 nm zone (EEZ) in accordance with the provisions of the United Nations Convention on the Law of the Sea of 1982.

The Marine Resources Act (2000) and Regulations Relating to the Exploitation of Marine Resources (2001, as amended) provide the basic legal framework for management and regulation of the marine fisheries sector. This Act was developed in the late nineties, following Namibia's accession to various international fisheries conventions, agreements and arrangements, which prompted a revision of the Sea Fisheries Act (1992). The Act sets forth the details of a rights-based management system, the main elements of which are outlined below.

¹ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

FISHING RIGHTS

Fishing rights, or rights of harvest, are the central element of the fisheries management regime. The Marine Resources Act states "No person shall ... harvest any marine resource for commercial purposes, except under a right ...". The main purpose of fishing rights is to limit entry to the fisheries sector in order to protect the fisheries resources and maintain sustainable operations. Fishing rights are granted for a period of 7, 10, 15 or 20 years depending on various factors, in particular the level of investment and the level of Namibian ownership and employment. Fishing rights are not freely transferable in Namibia, so as not to undermine the Government's goals of Namibianisation and empowerment within the sector.

FISHING LICENSES

All vessels are required to obtain a license in order to fish commercially within Namibia's 200-mile exclusive economic zone (EEZ). Namibia executes its flag-state responsibility by requiring all vessels that fly the Namibian flag to also have a specific license to harvest any marine resources in waters outside of the Namibian EEZ.

TOTAL ALLOWABLE CATCHES

Total allowable catches (TACs) are set annually for seven species: pilchard, hake, horse mackerel, red crab and rock lobster, orange roughy and monk. TACs are established on the basis of the best scientific evidence available of the size and structure of stocks as determined by the fisheries scientists employed by the Ministry. TACs aim to ensure sustainable fishing operations; that the level of fishing effort does not undermine the status of each stock.

INDIVIDUAL (NON-TRANSFERABLE) QUOTAS

Once a TAC has been set for a fishing season, it is distributed among the right holders in each fishery in the form of quotas. The main purpose with the quota allocation is to promote economic efficiency – to give companies sufficient knowledge about expected catch levels for the year for proper planning of their fishing activities. Quotas are not permanently transferable for the same reasons that rights are not transferable.

Marine catches are landed mainly at two major ports: Walvis Bay (90% of total) and Lüderitz (10% of total). The very small size of the marine artisanal fisheries sector makes monitoring of catches relatively easy.

FEES

Fees form an important part of Namibian fisheries management. Their role is twofold: firstly, to earn revenue for the government, and secondly to create incentives that work towards the goals of the management system, both conservation and Namibianisation. The most important are quota fees, which are payable on allocated quota.

By-catch fees that are applied in order to deter right holders from targeting species other than those for which they have been issued a quota. This is unique feature of the Namibia management system that is not seen in many other countries. Such fees provide an incentive to avoid catching non-target species. The levels of by-catch fees are carefully balanced to discourage the capture of non-target species, but are also not so punitive as to encourage dumping. A certain percentage of by-catch in the hake-directed fishery is not levied, since a reasonable amount of by-catch can not be avoided.

A Marine Resources Fund levy is imposed per tonne of landed catch to finance fisheries research and training initiatives. License fees are applied to fishing vessels in order to legally fish within Namibia's waters. Each year between 300 and 350 vessels are licensed by MFMR.

GIVING EFFECT TO INTERNATIONAL FISHERIES AGREEMENTS

The President of Namibia may enter into a fisheries agreement with a member country of the Southern African Development Community (SADC), providing for such country to harvest marine resources in Namibian waters. Such agreements may be published in the gazette. For any fisheries or international agreements entered into by Namibia, the Minister is empowered to make regulations necessary to give effect to such agreements. Texts of all conservation and management measures adopted under any fisheries or international agreement to which Namibia is a party may be published in the national Gazette.

MANAGEMENT AND CONSERVATION MEASURES

The Minister of Fisheries and Marine Resources can determine necessary management and conservation measures, including TACs, effort limitations, fishing-gear specifications, protection of juvenile fish through measures such as minimum allowable mesh size, grid selectivity device, minimum fish sizes to be landed, restrictions on by-catch, temporal and spatial closures and measures for shared/straddling stocks.

MONITORING, CONTROL AND SURVEILLANCE

Namibia's MCS system has evolved over the years into what is today widely regarded by the international community as a very effective system. A crucial element has been the financial, human and material support from the Namibian government. The costs to Government and industry of MCS and other management activities has been kept commensurate with the value of the sector. An integrated program of inspection and patrols at sea, on land and in the air ensures continuing compliance with Namibia's fisheries laws. The major features of the program are described below.

Fisheries Observer Programme

Emplacement of fisheries observers on board larger vessels serves both to ensure compliance and the collection of scientific data. Coverage rates range from 70-100%, depending on the fishery in question. The establishment of the new Fisheries Observer Agency under the Marine Resources Act will improve current capacities in this regard.

Compliance and Enforcement

The Act specifies the powers of enforcement officers in regard to stopping and boarding vessels, search and inspection, hot pursuit, seizure, and arrest. It provides for the establishment and functions of a Fisheries Observer Agency, which is charged with the collection of scientific operational data onboard fishing vessels, and observation and reporting on the fishing activities thereof.

Sea, air and shore patrols

Systematic sea patrols aim to ensure compliance with fishing conditions by licensed vessels through regular at-sea inspections. Air patrols detect and deter unlicensed fishing vessels and monitor the movement

and operations of the licensed fleet. Shore patrols ensure compliance by both recreational and commercial fishers with conservation measures for inshore resources.

Monitoring of landings

Complete monitoring of all landings at the two commercial fishing ports, Walvis Bay and Lüderitz, by onshore inspectors ensure compliance with quota limits and fee payments. Transshipping fish at sea between catching vessels and carrier vessels is prohibited – all fish must be landed at a Namibian port. This is another unique feature of the management system, and one that ensures comprehensive monitoring of catches.

Vessel reporting

All vessels are required to supply EEZ exit and entry reports, as well as daily catch and effort reports via radio and in the form of vessel log-sheets.

Vessel monitoring system

Namibia is well advanced in implementing a national satellite-based vessel monitoring system (VMS). Once fully operational the system will benefit fisheries management in real-time monitoring of vessel movement and activities. The system that has been chosen is already in use in the United Kingdom, Germany, United States, Morocco, and, closer to home, South Africa and Mozambique. Namibia is fully supportive of collaborating in the development of a cost-effective, regional VMS.

OFFENCES AND PENALTIES

Section 52 of the Marine Resources Act provides for offences and penalties for violations of the Act. Unauthorised fishing or contravention of licence conditions by Namibian or foreign flag vessels attract a fine of up to N\$2 million. Assaulting or hindering any officer authorised under Namibian law or and international agreement to which Namibia is a party can face a fine of up to N\$1 million. Other sections of Part IX of the Act provide for forfeiture, jurisdiction and admissible evidence.

RESEARCH

MFMR's Directorate for Resource Management undertakes a range of marine research activities. Main activities include stock survey and assessments to determine TACs, gear development (e.g. selectivity devices), oceanography, environmental research and the impact of the environment on stocks. Collaboration with regional and international partners such as BCLME and BENEFIT is a particular feature, as described later.

APPLICATION OF THE PRECAUTIONARY APPROACH

Namibia has applied sufficient resources to the development of adequate data collection and scientific research in support of the conservation and management measure decision-making process. In instances where data availability is inadequate, MFMR applies the precautionary approach in setting, for example, TACs and other management reference points. Namibia is committed to developing Fisheries Management Plans for the TAC-controlled fisheries, which will incorporate the Ecosystem Approach to Fisheries. A Management Plan for the hake fishery is advanced in its preparation.

STATE CONTROL OVER NATIONALS

Fishing vessels are required under section 40 of the Marine Resources Act to obtain specific licences to fish either in Namibia waters or on the high seas. Such licences require that vessels operated by Namibian right holders detail: the area where fishing may take place, allowable gear specifications and other license conditions, such as mandatory reporting requirements and the placement of on-board fisheries observers. Namibia will apply that measures to ensure that nationals operating outside Namibian waters do not support or engage in illegal, unreported and unregulated (IUU) fishing, including: (a) provision of reports from vessels operated by Namibian nationals that are consistent with any requirements prescribed by RFMOs to which Namibia is a member and Namibia's obligations under the FSA; (b) comply with boarding, inspection and observer requirements on the high seas; and (c) prohibit the use of vessels from engaging in high seas IUU fishing or undermining conservation and management measures of designated² RFMOs or arrangements.

Namibia will consider whether additional measures are required to ensure that Namibian nationals fully comply with the fisheries laws of other States, or the conservation and management measures adopted by designated RFMOs.

Namibia will examine existing national legislation and determine whether additional measures are required so as to make it unlawful for any person subject to Namibian jurisdiction to import, export, transport, sell, receive, acquire, possess or purchase any fish taken, possessed or sold in violation of any foreign law, treaty or regulation.

Regulations have recently been drafted that allow Namibian right holders to obtain licences for chartered foreign vessels to catch Namibia's share of marine resources regulated by ICCAT on high seas, under section 37 of the Act (giving effect to fisheries and international agreements).

Namibia maintains strong opposition to flag-of-convenience vessels and discourages the use of such vessels. Legal provisions will be considered to prohibit Namibia nationals from flagging fishing vessels under the jurisdiction of States that do not meet flag State responsibilities in regard to fishing on the high seas.

Namibia already maintains a register of the operators or beneficial owners of vessels flying its flag, including their nationality. In this way Namibia can identify its nationals should a vessel be involved in IUU fishing, for example. Namibia will encourage other coastal States and RFMOs to maintain similar information, and encourage cooperation and information exchanges for purposes of controlling nationals who may be involved in IUU fishing.

Namibia maintains a database of all Namibia flag vessels that have obtained authorisation to fish on the high seas, consistent with standards of RFMOs to which Namibia is a member. This information is maintained and shared with relevant RFMOs and other coastal States as requested.

Namibia will develop measures to discourage its nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities, including a review of the benefits they may receive from Namibia (such as landing rights) with a view to withholding such benefits.

² Designation by Notice in the *Namibian Gazette*, as called for under section 37 of the Act, provides the necessary certainty as to the high seas conservation and management measures that are applicable to Namibian nationals.

PART III: MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

INTERNATIONAL AND REGIONAL LAW AND RELATIONS

Namibia has signed and in some cases ratified a number of international and regional instruments. These are detailed in Table 1 below.

Table 1: Major Fisheries-related Organisations and Instruments to which Namibia is a party

Instrument	Ratification/ Acceptance
1982 United Nations Law of the Sea Convention (LOSC)	18 April 1983 (Ratification)
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement, 1995)	19 April 1996 (signature); 8 April 1998 (Ratification)
Implementation Agreement Of Part XI Of UNCLOS	28 July 1995 (Simplified procedure)
Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement)	7 August 1998 (Acceptance)
International Convention for the Conservation of Atlantic Tunas (ICCAT)	28 April 1999 (signature); 10 November 1999 (Ratification)
Convention for the Conservation of Antarctic Marine Living resources (CCAMLR)	5 February 2001 (Ratification)
South-east Atlantic Fisheries Commission (SEAFO)	20 April 2001 (signature); 26 February 2002 (Ratification)
INFOPECHE	30 December 1996 (Accession)
Convention on the International Maritime Organisation (IMO Convention)	Ratification in preparation?
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	18 th Dec 1990 (Ratification)

MEMBERSHIP IN REGIONAL FISHERY BODIES

MFMR cooperates with following regional and international fisheries organisations:

- **Southern African Development Community (SADC).** The SADC Protocol on Fisheries aims to promote responsible and sustainable use of the living aquatic resources and aquatic ecosystems within the SADC region.
- **INFOPECHE:** In 2001 Namibia signed a cooperation agreement with this International Fisheries Marketing Advisory Body to establish an INFOPECHE Unit in Namibia's capital, Windhoek. This Unit provides information and technical assistance in fish trade, marketing, processing and new innovations to INFOPECHE member states.
- **South East Atlantic Fisheries Organisation (SEAFO):** establishes a management regime for conservation and sustainable utilisation of fish, molluscs, crustaceans and other sedentary species in the high seas portion of FAO Statistical Area 47, but excluding those sedentary species that are subject to the fishery jurisdiction of coastal States and also tuna and tuna-like

species because these fall under the jurisdiction of ICCAT. Namibia is host to the SEAFO Secretariat.

- **International Commission For The Conservation Of Atlantic Tunas (ICCAT):** The rapid development of a thriving domestic tuna fishery provided the impetus for Namibia to join ICCAT in 1999, becoming the 28th member of the Commission. Namibia welcomes and supports the considerable effort that ICCAT is making in developing comprehensive management tools to deal with, *inter alia*, IUU fishing in the Atlantic Ocean.
- **Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR):** As a member of CCAMLR, Namibia is committed to the management and conservation of the marine resources of the Antarctic. The Namibian fishing industry is interested in fishing in CCAMLR's waters and is ready to participate responsibly in the harvesting of fishery resources, especially tooth fish.
- **Inter-governmental Oceanographic Commission (IOC):** Namibia became the 129th member of the IOC became on 25 April 2001. The IOC is an important facilitator of international oceanographic research programmes and Namibia is involved in its various training, technical assistance and research activities.

PARTICIPATION IN REGIONAL PROGRAMMES

- **SADC Regional Fisheries MCS Programme:** Namibia is a partner in this Programme, which operates under the SADC Protocol on Fisheries. The objectives of the programme address the marine fisheries resources of the Region. Capacity building and regional cooperation for MCS are prominent objectives. Expected results of the RDC MCS Programme include:
 - National fisheries MCS systems functioning;
 - Establishment of a basis for the management of shared stocks and international fishing activities
 - Harmonized approaches to the control of international fishing activities
 - Marine environment more protected
 - Enhanced regional cooperation and communication
- **Benguela Environment Fisheries Interaction and Training Programme (BENEFIT):** has established a research framework for biological and oceanographic investigation of the entire Benguela Current system. The principal focus of the programme is on resources and resource management research in support of the major fisheries of the three co-operating countries: Namibia, South Africa and Angola. Training of researchers is an important part of the programme as the lack of qualified personnel is a pressing problem in these countries.
- **Benguela Large Marine Ecosystem Programme (BCLME):** Launched in 2002, BCLME is of global significance, given the stance by the United Nations Conference on Environment and Development (UNCED) to develop an ecosystem-wide approach to environmental research. The programme aims to examine marine environmental variability throughout the Benguela current system and how environmental factors impact on fish stocks and their dependent fisheries.

COOPERATION BETWEEN STATES

Namibia will continue to coordinate and cooperate measures and activities described within the FSA with other States and appropriate RFMOs and regional programmes, particularly in regard to:

- Exchange and verification of data and other information on fishing and support vessels and their activities in the Region, including vessels that are refused registration or fishing licences, or are de-registered or have their licences removed;
- Investigations of vessels, persons or organisations suspected of being directly or indirectly linked to fishing in contravention to the FSA;
- Transfer of expertise, technology and sharing of MCS assets;
- Harmonisation of policy and legal measures for combating IUU activities;
- Accelerated implementation and maintenance of VMS, consistent with international best practice and operational standards;
- Mechanisms that allow a rapid, coordinated regional response to instances of fishing in contravention of the FSA;
- Boarding and inspection on the high seas, to the extent possible, consistent with international law, recognizing the rights and obligations of masters and of inspection officers; and
- Harmonisation of national fisheries observer programmes within the SADC Region, including cover for Namibian vessels or foreign vessels chartered to Namibian right holders on the high seas.

The provisions of the SADC Regional Protocol on Fisheries shall be utilised to the extent possible in facilitation of the above cooperation between SADC States. Technical assistance will be sought from regional bodies and ongoing programmes as appropriate.

PART V: DUTIES OF THE FLAG STATE

MEASURES TO IMPROVE REGISTRATION SYSTEM FOR FISHING VESSELS

Licensing and control measures provided for in this Part of FSA have already been described above.

Keeping the vessel register current

Namibian law currently requires registration of all fishing vessels. The register is however maintained by the Directorate of Maritime Affairs, Ministry of Works Transport and Communications (MWTC). The register is well maintained and kept fully up to date in regard to details concerning vessel specifications and ownership. Measures will be taken to ensure effective communication between MFMR Ministry and MWTC so that both parties are kept abreast of, for example, IUU vessel lists maintained by, for example, RFMOs and FAO, thus ensuring that no vessel with an IUU history is able to gain Namibian registration.

Control of registered vessels

Namibia will continue to take measures to ensure its ability to control vessels before granting registration. This will include the following:

Sufficient registration information

As a priority, the information required for vessel registration is reviewed to ensure it reflects the standards of transparency being developed at regional and international levels. In particular, the ICCAT rules to prevent vessels involved in chartering arrangements from being used for IUU fishing is reviewed and implemented.

Measures to deny registration

Measures to allow registration to be denied to a fishing vessel that has been convicted of offences, IUU fishing etc or, if registered, that will allow the vessel to be deregistered upon conviction or require deregistration if a vessel carries more than one registration are in place.

Coordination of government activities

The Ministry will strengthen its relationship with the Ships' Registry Office, through regular liaison and coordination, with a view to establishing information requirements and procedures so as to prevent and deter illegal fishing, including deregistration requirements for vessels convicted of fishing offences.

It is the current policy of the Namibian Government to allow foreign investors to form business ventures with Namibian right holders, rather than entering into access agreements allowing foreign vessels to fish in Namibian waters. Namibia will continue to take measures to ascertain whether any potential partner has been involved in illegal fishing, and if so will disqualify that partner from any investment opportunity or other role in the Namibian fishing sector.

Review of chartering arrangements

Although measures are already in place to ensure effective flag state control over vessels that fly the Namibian flag, measures will also be taken to ensure that Namibia can maintain control, in areas beyond national jurisdiction, of foreign vessels fishing under joint ventures or chartering arrangements. Such measures will require transparent chartering arrangements to ensure clear, current and accurate information is provided, and legal provisions will be considered:

- Requiring that the chartered vessels take on the nationality of Namibia – that is, be registered in Namibia and fly its flag – after a certain period of time, during which the viability of the fishery should have been proven; or
- Requiring the charter arrangement to make both Namibia and the flag State responsible for controlling the high seas fishing conducted pursuant to a charter arrangement.

The charter arrangement could, for example, provide express authority for both States to board and inspect the vessel on the high seas and require reporting of catch data to both States. Section 52 of the Act states "any person, being the owner, the lessee, the charterer or the master ..." of a vessel can be held liable for

most offences. This means that the charterer may be prosecuted if fishing takes place in contravention of the FSA.

COMPREHENSIVE RECORD OF FISHING VESSELS

Data for registration of high seas fishing vessels

The following data is required for the registration of fishing vessels authorised to fish on the high seas and in Namibia's EEZ:

- Name of fishing vessel, registration number, previous names (if known) and port of registry;
- Previous flag (if any);
- International Radio Call Sign (if any);
- Name and address of owner or owners;
- Where and when built;
- Type of vessel;
- Length;
- Name and address of operator (manager) or operators (managers) (if any);
- Type of fishing method or methods;
- Moulded depth;
- Beam;
- Gross registered tonnage;
- Power of main engine or engines;
- Past harvesting activities on the High Seas;
- High Seas areas where harvesting will take place.

AUTHORIZATION TO FISH

The Marine Resources Act requires fishing vessels to have a licence to fish prior to engaging in fishing activities, and this will continue to be enforced. Namibia will cooperate through regional organizations and programmes to develop arrangements to share fishing vessel licensing information.

MEASURES TO CONTROL TRANSPORT AND SUPPORT VESSELS

The Act prohibits transshipment at sea, and this law will continue to be enforced. Namibia will adhere to ICCAT's rules that at-sea transshipments take place only between ICCAT members or between ICCAT members and cooperating non-party States.

Notification requirements for landings and inspection for marine fisheries are already sufficient to ensure the detection of illegal practices. The legal authority to prohibit landings and in-port transshipments in a timely and effective manner is already in place, and does not warrant review.

Resolutions and recommendations determined by ICCAT and CCAMLR and other RFMOs to which Namibia is a party continue to be reviewed, and assessments made on how best to improve their implementation and enforcement.

IMPROVEMENT OF PORT STATE MEASURES TO COMBAT IUU FISHING

Advance notification for port access

Namibia will continue to ensure compliance with regulations requiring both national and foreign fishing vessels to provide advance notification in seeking access to either Walvis Bay or Lüderitz ports. For reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress vessel, vessels will automatically be provided port access, in accordance with international law.

Inspection of foreign vessels in port

MFMR's Inspectorate staff will continue to ensure that all foreign fishing vessels entering Namibian ports are thoroughly inspected to ensure that they have not contravened national laws and regulations of Namibia or other states, or conservation and management measures developed by RFMOs of which Namibia is a member. Data and information to be collected during routine inspections include: (a) the vessel's flag State and identification details; (b) name, nationality, and qualifications of the master and senior officers; (c) fishing gear on board; (d) catch on board, including origin, species, form, and quantity; (e) where appropriate, other information required by relevant regional fisheries management organizations or other international agreements such as valid fishing licence, presence of fully functional and approved vessel monitoring system communicator; and (f) total landed and trans-shipped catch.

Evidence indicating IUU fishing

Where evidence is found indicating that a foreign vessel in port has engaged in or supported fishing in contravention of the FSA, measures are taken to prohibit landing or transshipment of catch in Namibia ports. Any such action taken is promptly reported to the flag State of the vessel, as well as RFMOs and other States, as appropriate.

Procedures for port State control of vessels

Namibia will continue to ensure that Fisheries Inspectors are properly trained in ensuring compliance with catch documentation schemes developed by RFMOs such as ICCAT and CCAMLR.

Namibia will establish a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and general operating guidelines for Fisheries Inspectorate staff. Support and assistance from RFMOs and regional programmes may be sought in developing capacity and for implementation of this strategy.

COOPERATION WITH PORT STATES TO COMBAT IUU FISHING

Namibia will continue to cooperate with other States, both regionally and internationally, to agree on measures and procedures for effective port State control of fishing vessels.

IMPLEMENTATION OF PORT STATE MEASURES ADOPTED BY RFMOs

Legislative authority to deter fishing that undermines conservation and management measures under FSA or adopted or recommended by any RFMO to which Namibia is party is provided for under Section 37 of the Act. For the purpose of any fisheries agreements entered into, or any international agreements to which Namibia is a party, the Minister may make such regulations necessary or expedient for giving effect to the provisions of such agreements. The port State measures adopted by relevant RFMOs to which Namibia is a member is reviewed and regulations proposed, as required. In particular, provisions are being considered that would prohibit any person from landing, importing, exporting, selling, buying etc. any fish taken contrary to international conservation and management measures adopted a RFMO to which Namibia is party. Sanctions should be severe, including high fines, and forfeiture as applicable.

In addition, cooperation with the catch certification schemes developed by ICCAT and CCAMLR is being intensified to facilitate detection and the fisheries legislation is undergoing review to ensure the appropriate inspection and reporting requirements are sufficient, and the sanctions provide an adequate deterrent.

PART VI: COMPLIANCE AND ENFORCEMENT

IMPLEMENTATION OF RELEVANT INTERNATIONAL INSTRUMENTS

Section 37 of the Marine Resources Act (Giving effect to fisheries and international agreements) states that the Minister may, for the purpose of any fisheries agreement entered into or any international agreement to which Namibia is a party, make such regulations as the Minister may consider necessary or expedient for the carrying out and for giving effect to the provisions of any such agreement or any amendment of such agreement. The Minister shall publish in the *Gazette* the texts of all conservation and management measures³ adopted under any international agreement to which Namibia is a party and any measure so published shall be deemed to be a regulation prescribed under section 61 of the Act.

Namibia will ensure that the texts of all fisheries and international agreements have been duly published, and will continue to adhere to its obligations to all international instruments to which it is a party (refer table 1 above).

³ "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, and the Implementation Agreement (i.e. the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks).

Namibia's policies and legal framework incorporate many of the principles and objectives of the FSA as well as the 1993 FAO Compliance Agreement and the 1995 FAO Code of Conduct for Responsible Fisheries.

NATIONAL LAWS, REGULATIONS AND PRACTICES RELATING TO IUU FISHING

Existing fisheries legislation

Namibia completed a review of its legal framework for fisheries in the late nineties, culminating in the enactment of the Marine Resources Act (2000). The new Act makes provision for ensuring that Namibia fully complies with its international and regional obligations in regard to responsible fisheries management and operations of vessels flying its flag and its nationals.

As described above, the current legal regime already incorporates many of the articles of the FSA. Evidentiary standards and admissibility, including the use of electronic devices and new technologies such as vessel monitoring systems, as called for in the FSA, are already provided for in the Marine Resources Act (Part IX: Offences and Proceedings). These evidentiary provisions are innovative in terms of permitting certificate evidence and contain modern provisions relating to burden of proof for fisheries offences. They are also satisfactory for the introduction of evidence of new technologies. There is however no special reference to the admissibility of evidence taken in such situations as high seas boarding and inspection by a non-national inspecting officer. It may be appropriate to undertake such a review.

Namibia will endeavour to ensure that the Marine Resources Act and regulations are reviewed so as to consider whether to give legal status to the following areas through laws, regulations or other legally-binding instruments, or to take other measures to address these areas.

Vessels without nationality

As a member of the International Maritime Organisation, Namibia will consider what legal measures could be taken, consistent with international law, in relation to vessels without nationality⁴ that are involved in IUU fishing on the high seas. Namibia will ensure communication as appropriate through any RFMO of which it is a member to notify other States of information it receives or action it takes. It will also be ready to receive information from any RFMO or other State regarding a vessel without nationality that may appear to be heading for Namibia waters, and will take appropriate measures. Namibia will also consult with other coastal states concerning actions, which could be taken bilaterally or regionally.

Namibia currently lacks capacity to take active measures in relation to vessels without nationality that fish on the high seas, but will cooperate as appropriate with member countries of appropriate RFMOs that have such legislation and capacity.

Sanctions

Sanctions are detailed in Section 52 of the Act (Offences and penalties). Any person who, being the owner, the lessee, the charterer or the master of a foreign flag vessel uses such vessel in Namibian waters for harvesting marine resources, or allows it to be so used without the authorization of a valid licence in respect thereof shall be guilty of an offence and liable on conviction to a fine not exceeding N\$2 million. Any person who, being the owner, the lessee, the charterer or the master of a Namibian flag vessel, uses such vessel to

⁴ I.e. vessels having no flag, or more than one flag.

harvest marine resources (i.e. both inside or outside Namibia waters), or allows it to be so used, without the authorisation of a valid licence in respect thereof shall be guilty of an offence and liable on conviction to a fine not exceeding N\$2 million.

In addition, any person who assaults, obstructs, resists, hinders, threatens or intimidates a fisheries inspector, or fisheries observer, or any person authorized by any international agreement to which Namibia is a party to board or inspect a Namibian flag vessel on the high seas, in the exercise of any power or the performance of any duty under this Act; shall be guilty of an offence and liable on conviction to a fine not exceeding N\$1 million.

Any person who, *inter alia*, violates any condition of a right, an exploratory right, a fisheries agreement, a quota or a licence; shall be guilty of an offence and liable on conviction to a fine not exceeding N\$500,000.

Section 54 provides for forfeiture of any marine resource, fishing gear, vessel, vehicle or item in respect of which the offence was committed in addition to any other penalty imposed.

Under Section 56, Namibia courts have jurisdiction to try charges for an offence under the Act committed within Namibian waters.

It may be prudent for Namibia to undertake a review of these sanctions to assess whether they are of sufficient severity to effectively prevent, deter and eliminate illegal fishing on the high seas and deprive the offenders of the benefits accruing from such fishing. Such a review may encompass: levels of fine, the seizure, sale and forfeiture of items used in the offence, terms of imprisonment, fines and penalties specifically for IUU fishing beyond areas of national jurisdiction, and other relevant considerations. Consideration will be made to the list of serious violations given in Article 21(11) of the FSA, in order to ensure that penalties for such offences are at the appropriate level.

In addition, the level of fine for non-reporting or misreporting will be reviewed (including by reference to similar fines in the region) in order to better enforce against illegal fishing, including by use of catch certification schemes, and landing and transshipment documentation requirements.

Non-cooperating States

Namibia will continue to cooperate with all RFMOs to which it belongs to prevent, deter and eliminate the activities of non-cooperating States that engage in IUU fishing. In particular, it will implement all relevant resolutions of ICCAT, CCAMLR and SEAFO.

Monitoring, control and surveillance

The Marine Resources Act makes adequate provision for MCS in regard to Namibian flag vessels inside and outside Namibian waters, as well as foreign flag vessels fishing inside Namibian waters and, to the extent authorised by international agreements to which Namibia is a party, outside Namibian waters. Specific provisions relate to licensing, vessel records, establishment of a VMS, observers and port inspections, consultative mechanisms and public awareness, boarding and inspection regimes and MCS data collection, storage, analysis and dissemination. The Act also provides sufficient legal flexibility for regional cooperation in MCS.

The Ministry's MCS and fisheries licensing capabilities have continued to strengthen since Independence in 1990. The fisheries observer programme, devolved in May 2002 to the autonomous Fisheries Observer Agency, is effective. The Ministry maintains close working relations with the FOA. The Ministry's Fisheries Inspectors carry out port inspections of all landings made. Since Independence, Namibia has focussed strongly on reducing IUU operations through building up an effective MCS capability. The Ministry shall continue to adopt an MCS strategy that addresses IUU fishing, with the following priorities:

- Enforcement of national laws and regulations within the EEZ;
- Compliance with vessel and gear marking requirements;
- Increased observer coverage;
- Continued training and human resource capacity building, including training for within-zone and high seas boarding and inspection;
- Improved liaison with the Fisheries Observer Agency and vessel registration unit within the Ministry of Works, Transport and Communications;
- Further enhancement of the fisheries observer programme;
- Continued inspection of all landings at both ports;
- Full implementation of the national VMS, in step with amendments to the law regarding VMS and high seas fishing;
- Improved liaison with RFMOs of which Namibia is member;
- Improved communication with other organizations and networks, such as FAO and the MCS Network.

The Ministry shall continue to ensure that adequate human, material and financial resources are allotted to fisheries MCS operations as part of the annual budgetary planning exercise.

MEASURES TO COMBAT IUU FISHING IN NAMIBIAN WATERS

Namibia currently exercises its rights as a coastal State and signatory to the 1982 Law of the Sea in regard to conservation and management of the living marine resources under its jurisdiction. Current policy, legislation and management measures have been effective in reducing IUU fishing within the Namibia EEZ to a low level.

Namibia will ensure that:

- MCS and enforcement activities continue to ensure compliance with national laws and licence conditions by all vessels that are authorised to fish in Namibia's EEZ;
- No vessel fishes in Namibia waters (or outside, in the case of Namibia flag vessels) without a valid authorisation (licence);

- Only vessels that are duly recorded on a vessel register are authorised to fish;
- Transshipment occurs only in Namibia ports, as authorised by MFMR;
- No vessel with a history of IUU fishing is given an authorisation to fish, or is able to register to fly the Namibia flag.

COOPERATION WITH OTHER COASTAL STATES AND RFMOs

Namibia will continue to cooperate with its neighbouring coastal States, especially those in which Namibian vessels are fishing or those who have vessels operating under charter arrangements in Namibia waters, with a view to exchanging data and cooperating in enforcement of the provisions of the FSA. Cooperation will be carried out bilaterally and through the RFMOs of which Namibia is a member. In addition, information will be sought from ICCAT, CCAMLR, SEAFO, FAO and other sources as appropriate as to the vessels that may be fishing in Namibia's EEZ.

IMPLEMENTATION OF THE IPOA-IUU THROUGH RFMOs

Namibia will continue to work through RFMOs to implement the provisions of the FSA. Namibia supports proposals made for relevant activities, and implements any decisions taken to the fullest extent possible. In order to participate in RFMOs and to actively implement their resolutions and processes (such as provision of information), Namibia may seek technical assistance to further Namibia's participation in some of the following endeavours:

- Institutional strengthening of RFMOs;
- Additional compliance mechanisms to be adopted by RFMOs;
- Better collection and exchange of information through RFMOs;
- Strengthen monitoring, control and surveillance through RFMOs;
- Development of comprehensive port State systems through RFMOs;
- Improve documentation and certification schemes through RFMOs;
- Regulate chartering arrangements through RFMOs;
- Formalise cooperation among RFMOs and between RFMOs and other international organizations.

As host of SEAFO, Namibia shall continue its efforts to encourage signatory States to the SEAFO Convention who have yet to ratify the Convention to do so. Namibia will also encourage non-contracting parties with a real interest in the fishing opportunities within the SEAFO Convention Area to also sign and ratify the Convention.

PART VII - REQUIREMENTS OF DEVELOPING STATES

TRAINING

Since Independence, MFMR has placed a very high priority on human resource development across the board, from fishermen to vessel skippers, from research scientists to senior managers. Four courses have been developed by MFMR: (a) Fisheries Inspector and Observers Course (9 months duration); (b) Commercial Sampling Programme for Fisheries Observers (3 x 2 weeks); (c) Cadet Programme for patrol boat officers (4 years); and (d) Scientific Technical Assistance course (6 months).

Courses are undertaken at the country's own academic institutions (Namibian Maritime and Fisheries Institute (NAMFI) at Walvis Bay and the Polytechnic of Namibia and University of Namibia (Windhoek). Patrol vessel officers and engineers receive training through on-the-job training with Norwegian technical specialists and also on courses organised with South Africa. The Ministry also utilises training/education opportunities for its staff both regionally and internationally. National scientists undertake various short and long courses leading to diploma, degree and post-graduate qualifications, and MFMR organises regular *ad hoc* workshops and seminars into various aspects of fisheries research, development and management, often through regional programmes such as BENEFIT and BCLME.

DEVELOPMENT ASSISTANCE

In addition to MFMR's own budgets, considerable assistance has been received in fisheries development, management and training through external economic and technical assistance. All have been donor supported usually with a significant contribution in cash or in kind from the Namibian Government. Bi-lateral assistance has been provided, and many cases continues to be provided, by Norwegian Agency for Development Cooperation (NORAD), Australian International Development Assistance Bureau (AIDAB), Danish International Development Agency (DANIDA), Department for International Development (DFID) UK, Gesellschaft für Technische Zusammenarbeit (GTZ), Germany, Centrum für Internationale Migration und Entwicklung (CIM), Germany, Icelandic International Development Agency (ICEIDA), Iceland, Government of Spain, International Centre for Ocean Development (ICOD), Japanese International Cooperation Agency (JICA), and Fonds d'Aide et de Coopération (France).

Multi-lateral assistance has been provided by: Food and Agriculture Organisation (FAO), United Nations Industrial Development Organisation (UNIDO), Commonwealth Fund for Technical Cooperation (CFTC), Global Environment Facility (GEF), and the European Union (EU).

TECHNICAL CAPACITY AND RESOURCES

MFMR will continue to provide adequate human, financial and material resources to its MCS and enforcement activities in support of the activities detailed in this report. Technical assistance available through RFMOs, donor organisations and regional programmes will be utilised as required in support of training and skills development.

Namibia will cooperate to support training and capacity building and technical assistance to other developing countries, in order to fully meet commitments under the IPOA and obligations under international law, especially in regard to duties as flag States and port States. The support of FAO and relevant international financial institutions and mechanisms, may be sought as appropriate.